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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1972

No. 72-686

DEPARTMENT OF MOTOR VEHICLES OF THE STATE OF CALIFORNIA, *Petitioner,*

vs.

FEDERICO RIOS, a minor, etc., *Respondent.*

On Petition for a Writ of Certiorari to the Supreme Court of California

BRIEF FOR RESPONDENT IN OPPOSITION

QUESTIONS PRESENTED

(1) Whether the decision below, which is based in part on California cases construing the California Constitution, rests solely upon an independent federal ground so as to be within the appellate jurisdiction of this Court.

(2) Whether the Department's summary suspension procedure, based solely upon written submissions

by adverse parties, satisfies basic due process requirements.

STATEMENT OF THE CASE

The California Financial Responsibility Law (CAL. VEHICLE CODE §16000, *et seq.)* provides that a driver involved in an automobile accident which results in any bodily injury or in property damage exceeding $200 must file a written accident report within fifteen days of the accident. The official report form provided by the Department of Motor Vehicles [hereinafter "Department"] contains a section requiring each party to indicate who was at fault in the accident and to provide a written description of the accident. The report form also requires each party to estimate the amount of the damages and to indicate whether he had an automobile liability insurance policy in effect at the time of the accident.

If a driver was not insured at the time of the accident, the Department endeavors to determine whether there is a "reasonable possibility that a judgment may be recovered" against him. If the Department decides that there is such a possibility, it estimates the amount of such possible judgment and notifies the uninsured motorist that his license will be suspended unless he either deposits security for that amount within ten days or establishes an exemption from the security requirement. CAL. VEHICLE CODE §16080. The most common exemptions include a release from the other party to the accident or proof of a settlement with the other party. CAL. VEHICLE CODE §§16050-59.

Prior to the decision of the court below, the determination of both the driver's potential culpability and the amount of his potential liability were based solely upon the written report forms of the drivers involved. A driver was not given the opportunity for a personal hearing and he was not allowed to examine the information upon which the Department based its decision.[1]

On August 15, 1972, the California Supreme Court issued its writ of mandate ordering the Department to grant a personal hearing prior to the suspension of drivers' licenses under the Financial Responsibility Law. Citing federal cases and state cases construing both the United States and California Constitutions, the court unanimously held that the Department's denial of a personal hearing violated the basic requirements of due process.

I.

THE DECISION BELOW WAS BASED ON AN ADEQUATE AND INDEPENDENT NONFEDERAL GROUND

In reaching the decision below, the California Supreme Court stated:

> Petitioner relies on numerous recent cases in which the United States Supreme Court and this court have recognized that an individual is constitutionally entitled to a hearing prior to being deprived of a significant interest. (Goldberg v. Kelly (1970) 397 U.S. 254, 266; Sniadach v. Fam-

[1]The Department has conceded that it may not properly withhold the adverse party's report. Department Br. at 8.

> ily Finance Corp. (1969) 395 U.S. 337, 342; Randone v. Appellate Department (1971) 5 Cal.3d 536, 547.) This principle is applicable to a plethora of vital personal and property rights (see Randone v. Appellate Department, 5 Cal.3d 536, 548, fn. 8), but it has most frequently been applied in this state to invalidate statutes affording a creditor prejudgment remedies against a debtor without prior notice or hearing (see, e.g., Blair v. Pitchess (1971) 5 Cal.3d 258; McCallop v. Carberry (1970) 1 Cal.3d 903; Cline v. Credit Bureau of Santa Clara Valley (1970) 1 Cal.3d 908).
>
> The rule explicated in the foregoing cases is applicable to the instant circumstances.
>
> 7 Cal.3d 792, 795.

The California cases cited above interpreted both the United States and California Constitutions. In *Blair v. Pitchess,* 5 Cal.3d 258 (1971), the court held that the California claim and delivery law violated the due process clauses of both the United States and California Constitutions. And in *Randone v. Appellate Department,* 5 Cal.3d 536 (1971), *cert. denied* 407 U.S. 924 (1972), the court held that California's law authorizing prejudgment attachments also violated the due process clauses of the United States and California Constitutions. Pursuant to these cases, the California Supreme Court would have reached the same result in the present case had it confined its analysis solely to the state constitutional issue.[2]

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[2]In Respondent Rios' supplemental brief on the merits before the California Supreme Court, he asserted both the federal and state due process clauses as grounds for decision.

The mere fact that the California court cited federal constitutional decisions in no way indicates that it restricted its holding to federal constitutional grounds. The California Supreme Court has long held that the California Constitution's due process provision, CAL. CONST. ART. 1, §13, provides protections substantially similar to the due process clause of the Fourteenth Amendment. *See, e.g., Sail'er Inn, Inc. v. Kirby,* 5 Cal.3d 1, 15-17 (1971). Accordingly, federal constitutional cases are frequently cited by the California Supreme Court in reaching decisions under the state constitution. *See, e.g., Department of Mental Hygiene v. Kirchner,* 60 Cal.2d 716 (1964), *vacated* 380 U.S. 194, *judgment reinstated* 62 Cal.2d 586 (1965).

In *Department of Mental Hygiene v. Kirchner,* 380 U.S. 194, 197 (1965), Mr. Justice Harlan stated: "This Court is always wary of assuming jurisdiction of a case from a state court unless it is plain that a federal question is necessarily presented, and the party seeking review here must show that we have jurisdiction of the case." In light of the viability of the due process clause of the California Constitution, it is far from plain that "a federal question is necessarily presented" in this case.[3] By declining to review the decision below, this Court may avoid the problem that

[3]This is not a case where ". . . the State Constitution was interpreted under what the state Court deemed the compulsion of the Federal Constitution." Department of Mental Hygiene v. Kirchner, 380 U.S. 194, 198 (1965). *Compare* State Tax Commission of Utah v. Van Cott, 306 U.S. 511 (1939). Here, the state and federal due process clauses are independent and separate bases for decision. *See* Jankovich v. Indiana Toll Road Commission, 379 U.S. 487 (1965).

developed in *California v. Krivda,* 41 U.S.L.W. 3224 (S.Ct. Oct. 24, 1972), where, after full briefing and oral argument, the matter could not be decided on the merits because of questions regarding the Court's jurisdiction. *Cf. Jankovich v. Indiana Toll Road Commission,* 379 U.S. 487 (1965).

II.

THE DECISION BELOW DOES NOT REQUIRE THE DEPARTMENT TO MAKE A FULL ADJUDICATION ON THE ISSUE OF LIABILITY

By ordering the Department to hold hearings prior to license suspensions the court below did not transform the procedure into a full adjudication on the issues of liability. The court reaffirmed that the determination to be made by the Department was "whether there is a reasonable possibility of a judgment against the driver . . ." 7 Cal.3d 792, 799. Contrary to the Department's assertion, its role is not analogous to the role of a trial court in ruling on a demurrer to a complaint. The Department may not merely assume the facts stated in the complaining driver's accident report to be true. Rather, it has an affirmative duty to assess the credibility of the reports in question. *Orr v. Superior Court,* 71 Cal.2d 220, 227 (1969).

Under the Department's previous procedures at issue herein, the decision to suspend a driver's license[4]

[4]This Court has recently noted that the decision to suspend a driver's license ". . . may become essential in the pursuance of a livelihood." Bell v. Burson, 402 U.S. 535, 539 (1972).

could be made solely on the basis of the written assertions by adverse parties. As the court below found, this unilateral power to effect the suspension of a license by asserting a spurious or dubious claim or by inflating the value of the damages enabled complaining drivers to coerce the uninsured motorist to compromise potential defenses in private litigation.[5] Under these circumstances, the procedural protections afforded by a personal hearing are particularly necessary to arrive at a meaningful determination of possible culpability. The Department has shown no exceptional circumstances which would warrant the denial of rudimentary due process procedures. *Cf. Ewing v. Mytinger & Casselberry, Inc.*, 339 U.S. 594 (1950); *North American Storage Co. v. Chicago*, 211 U.S. 306 (1908).

III.

PROVIDING PERSONAL HEARINGS WILL NOT RESULT IN AN UNDUE ADMINISTRATIVE BURDEN

Pursuant to the California Vehicle Code, the Department presently has in effect an informal personal hearing mechanism to adjudicate suspension cases other than those arising under the Financial Respon-

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[5]The court below stated:

> The others involved in the accident may omit pertinent matters or may simply falsify their reports in an attempt to force petitioner to pay their claims of damage or suffer suspension of his license. If he is not afforded the opportunity to challenge these errors or misstatements at a hearing before the Department he is forever precluded from a meaningful opportunity to defend his version of the accident to avoid a suspension.
>
> 7 Cal.3d 792, 798 n.5.

sibilty Law. *E.g.*, CAL. VEHICLE CODE §§13800, 14100. Every month the Department conducts thousands of personal examinations, hearings, and interviews, each dealing with the particular facts and circumstances of an individual driver's case.[6] In light of the Department's existing hearing mechanism, the added administrative burden caused by affording the opportunity for personal hearings in Financial Responsibility Law suspensions would be minimal.

IV.

THERE ARE NO CONFLICTING LOWER COURT DECISIONS

On November 13, 1972, this Court vacated the decision of the three-judge district court in *Rivas v. Cozens*, 41 U.S.L.W. 3271 (S.Ct. Nov. 13, 1972). Thus, the Department's assertion that it is subject to two conflicting decisions is no longer applicable.

To the best of Respondent's knowledge, every other lower court which has recently considered the issue has held that a personal hearing is required in financial responsibility suspension cases. *See MacBeth v. State of Utah*, 332 F.Supp. 1191 (C.D. Utah 1971); *Pollion v. Lewis*, 332 F.Supp. 777 (N.D. Ill. 1971); *Gayton v. Cassidy*, Civil No. SA 69 CA 153 (W.D.

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[6]During April, 1971, for example, the Department of Motor Vehicles held a total of 11,252 personal hearings, interviews and re-examinations under CAL. VEHICLE CODE § 13800 alone. *See* CALIFORNIA DEPARTMENT OF MOTOR VEHICLES, REPORT OF GENERAL ACTIVITIES at 6 (April 1, 1971), appended to Respondent Rios' memorandum to the California Supreme Court in opposition to a partial stay of the effectiveness of the decision (filed August 28, 1972).

Tex., Junee 30, 1971); *Pratt v. Kaye,* ..... F.Supp. ....., 40 U.S.L.WW. 2197 (D.D.C., Sept 21, 1971); *Ferguson v Root,* Noo. S 771-560, Ind. Super. Ct., Oct. 19, 1971, 5 Clearinghoouse Rev. at 677 (March 1972).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorarri should be denied.

Dated: NNovember 22, 1972.

Respectfully submitted,

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